join the union. It is difficult to reconcile this conclusion with those decisions which permit striking employees to induce by peaceful persuasion others to quit work, or withhold their patronage from the employer.[29] In view of the tendency of courts generally to enlarge, rather than restrict, the scope of the workers' privilege to disturb relations in order to promote their own welfare, the decision was hardly to be expected.[30]

INJUNCTION TO PROTECT THE RIGHT OF PROPERTY IN NEWS.—In a recent case, *Associated Press* v. *International News Service* (C. C. A. 1917) 245 Fed. 244, the complainant sought to restrain the defendant from appropriating news gathered at great cost by the complainant for the use of its members, and selling and transmitting the same to the customers of the defendant. The defendant, as the court below found, had thus appropriated the news by three methods: first, by employing and paying an employee of one of complainant's members to furnish such news as received from the complainant, before publication; second, by obtaining complainant's news before publication from the "New York American," published by one of complainant's members, and thus inducing such member to violate the confidence under which it receives the complainant's news; third, by taking complainant's news reports from the early editions of newspapers published by complainant's members, or from their bulletin boards, either transcribing them bodily or rewriting them without original investigation and without expense. The district court[1] had no hesitancy in enjoining the first two practices, and the soundness of its decree is supported by a long line of decisions both in this country and in England.[2] As to the third practice, although the court found the facts substantially as alleged, it entertained a sufficient doubt as to the propriety of the decree sought (considering that a new point was involved) that it refused the injunction. On appeal to the circuit court of appeals, a further decree was entered, enjoining the third practice.

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[29]Jones *v.* Van Winkle Machine Works (1908) 131 Ga. 336, 62 S. E. 236; Karges Furniture Co. *v.* Amalgamated, *etc.*, Union, *supra;* Iron Molders' Union *v.* Allis-Chalmers Co., *supra*; Heitkamper *v.* Hoffmann, *supra*; Lindsay & Co. *v.* Montana Federation of Labor, *supra.* But see Jonas Glass Co. *v.* Glass Bottle Blowers' Assn., *supra.*

[30]Suppose the employees of the plaintiff who had already agreed to join the union sought to persuade other employees to join. Would the court have restrained this interference?

[1]Associated Press *v.* International News Service (D. C. 1917) 240 Fed. 983.

[2](a) Injunction against inducing a breach of a contract. Lumley *v.* Wagner (1852) 1 De G., M. & G. *604, (employment contract); Peabody *v.* Norfolk (1868) 98 Mass. 452, (employment contract with provision not to disclose); American Malting Co. *v.* Keitel (C. C. A. 1913) 209 Fed. 351, (contract of sale); Exchange Telegraph Co. *v.* Gregory & Co. [1896] 1 Q. B. 147.

(b) Injunction against interference with confidential relationship. Merchants' Syndicate Catalogue Co. *v.* Retailers *etc.* Co. (D. C. 1913) 206 Fed. 545; Tabor *v.* Hoffman (1889) 118 N. Y. 30, 23 N. E. 12, (injunction against the use of patterns obtained through interference with confidential relationship); Stone *v.* Grasselli Chemical Co. (1903) 65 N. J. Eq. 756, 55 Atl. 736; Pollard *v.* Photographic Co. (1888) 40 Ch. D. 345.

As no breach of an express contract obligation or of a fiduciary relationship existed in the copying of news from a public bulletin and from newspapers sold on the street, the court based the equitable relief on the protection of a property right in the complainant. That the news gatherer has a property right in the news gathered has been thoroughly established.[3] The right, however, is not of the same nature as the right of an author in his literary production or as the right of an inventor in his invention: the facts contained in the news, as facts, are the property of no one. The thing which creates the right in news, which gives it the nature of property, and the thing which equity protects, is the quality of "firstness", a quality which is acquired only after the vast expenditure of capital and labor required to collect the world's news in record time and to distribute it to the public. It is this quality of "firstness", brought about by the service of collection and distribution, which gives news its commercial value and which finds for it a place on the public market.[4] The question on which the circuit court of appeals was called upon to pass was whether the acts of writing the news on a public bulletin or of printing the same in a newspaper and selling the paper on the street—acts which were absolutely necessary for service to the public and for a remuneration to the news gatherer—were such acts as surrendered and abandoned all the property right which the complainant had in the news, with the result that the defendant could with impunity copy the news and without any original investigation telegraph it broadcast throughout the country as its own and so reap the reward for which the complainant is expending $3,500,000 annually. It seems obvious that under such a practice the Associated Press in the extensive scope of its present service could not long compete with the International News Service. It seems equally obvious that upon the withdrawal of the complainant from the business would come death to the business of the defendant as well. "The parasite that killed, would itself be killed, and the public would be left without any service at any price."[5] Not only did

[3]National Tel. News Co. *v.* Western Union Tel. Co. (C. C. A. 1902) 119 Fed. 294; Board of Trade *v.* Christie Co. (1905) 198 U. S. 236, 25 Sup. Ct. 637; Dodge Co. *v.* Construction Information Co. (1903) 183 Mass. 62, 66 N. E. 204; Exchange Tel. Co. *v.* Gregory & Co., *supra*; Exchange Tel. Co. *v.* Central News, Ltd. [1897] 2 Ch. 48; Kiernan *v.* Manhattan Quotation Tel. Co. (N. Y. 1876) 50 How. Pr. 194.

[4]As to the nature of the property rights in news, see Exchange Tel. Co. *v.* Central News, Ltd., *supra*; Kiernan *v.* Manhattan Quotation Tel. Co., *supra;* Dodge Co. *v.* Construction Information Co., *supra.* In National Tel. Co. *v.* Western Union Tel. Co., *supra,* at p. 298, Judge Grosscup said: "Indeed, the printed tape under consideration has no value at all as a book or article. It lasts literally for an hour, and is in the waste basket when the hour is passed. It is not desired by the patron for the intrinsic value of the happening recorded—the happening, as an happening, may have no value. The value of the tape to the patron is almost wholly in the fact that the knowledge thus communicated is earlier, in point of time, than knowledge communicated through other means, or to persons other than those having a like service. In just this quality—to coin a word, the precommunicatedness of the information—is the essense of the appellee's service; the quality that wins from the patron his patronage."

[5]National Tel. News Co. *v.* Western Union Tel. Co., *supra,* 296; see also Exchange Tel. Co. *v.* Gregory & Co., *supra,* 156; Kay, L. J. said: "It is obvious that what the defendant did could be done by others, and very few persons would become subscribers if the information could be got by inducing some person who had it as a subscriber to communicate to others in this way."

the circuit court of appeals in its decree satisfy the sense of justice and fair play inherent in the human kind by enjoining the defendant parasite from continuing its deadly work, but we submit that the decree is in full accord with the fundamental principles of equity jurisdiction and is not without controlling precedent.

We have said that the property right in news is of a different nature from the property right of an author in his literary production. The law has recognized this difference, and has made the literary production copyrightable whereby the law gives an absolute protection to the rights of the author through a period of years.[6] If the author *publishes* his work without complying with the requirements of the copyright statute giving legal protection, he is held to have abandoned his property rights in the production and to have dedicated the same to the public.[7] The same is true in relation to a patentable article when it is *published* without having complied with the patent law.[8] But can the same be said to be true in any sense of a commodity around which the law has thrown no protective arm? News cannot be copyrighted;[9] the literary form may be, but when we buy a newspaper on the street, we are not paying for literary form, we want what purports to be facts. Then as law grants no protection to news there is certainly no presumption of an intention to abandon the property right contained therein when the news is used in the only possible way it can be used to the gatherer's advantage or to that of the public. The term "publication" then, as used in its legal sense, in relation to copyrightable and patentable articles, has no similar application when used in relation to non-copyrightable and non-patentable articles.[10]

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[6]Copyright Statute, 35 Stat. 1075; 9 U. S. Comp. Stat. (1916) § 9517 *et seq.*

[7]This is the effect of the Copyright Statute, *supra,* § 9533. New York Times *v.* The Sun *etc.* Ass'n. (C. C. A. 1913) 204 Fed. 586; Wheaton *v.* Peters (1834) 33 U. S. 591; The "Mark Twain" Case (C. C. 1883) 14 Fed. 728.

[8]Under the statute 29 Stat. 692, 8 U. S. Comp. Stat. (1916) § 9430, abandonment will be presumed where there has been a public use more than two years before the application for the patent. International Tooth Crown Co. *v.* Gaylord (1891) 140 U. S. 55, 11 Sup. Ct. 716; Egbert *v.* Lippmann (1881) 104 U. S. 333; Consolidated Fruit-Jar Co. *v.* Wright (1876) 94 U. S. 92; National Cash Register Co. *v.* American Cash Register Co. (C. C. A. 1910) 178 Fed. 79; Westcott Chuck Co. *v.* Oneida *etc.* Co. (1910) 199 N. Y. 247 (patent had expired); see Tabor *v.* Hoffman, *supra,* 35.

[9]Springfield *v.* Thame (1903) 89 L. T. 242; see Bowker, Copyright 88, 89; Walter *v.* Steinkopff [1892] 3 Ch. 489, 495. In National Tel. News Co. *v.* Western Union Tel. Co., *supra,* the court said, "Appellee could not in the nature of things, procure copyright under the Act of Congress upon its print tape." At p. 296. "In no accurate view can appellee be said to be a publisher or author." At p. 299. *Cf.* Chilton *v.* Progress *etc.* Co. [1895] 2 Ch. 29.

[10]In National News Tel. Co. *v.* Western Union Tel. Co., *supra* at p. 300-301 the court expressly stated that publication as the term is applied to the Copyright Act as a limitation upon the right in authorship did not apply to the facts of that case. Judge Grosscup said: "Is the enterprise of the great news agencies, or the independent enterprise of the great newspapers or of the great telegraph and cable lines, to be denied appeal to the courts, against the inroads of the parasite, for no other reason than that the law fashioned hitherto to fit relations of authors and the public, cannot be made to fit the relations of the public and this dissimilar class of

Not only is there no presumption that the news gatherer intends to abandon his property right when he writes the news on the bulletin or sells a paper on the street, but, the very nature of the business, the expense and labor involved in collecting and distributing the news, raises a presumption that the gatherer intends to keep his property right as long as the news has commercial value.[11] Mr. A delivers a lecture or Mr. B produces a play; the public are admitted, but equity will enjoin any use of the lecture or the play which will affect the commercial value of the same in the hands of A or B.[12] There is no restriction on the number or the class of those who may look or listen; no contract is entered into, but equity plainly implies a restriction on the use to be made of the lecture or play.[13] So in the news ticker cases the courts say there is a restriction, that there is a confidential relationship and that they will enjoin the breach,[14] but the fact is that the news and stock quotations are posted on bulletins in offices, clubs, hotels, and the like where anyone who runs may read. Yet equity will enjoin any commercial use which tends to diminish or destroy the value of the news or quotations in the hands of the collector or his assignee.[15] "The information will not become public property until the plaintiff has gained its reward."[16] And so in the principal case,

servants? Are we to fail in our plain duty for mere lack of precedent? We choose, rather, to make precedent—one from which is eliminated, as immaterial, the law grown up around authorship—and we see no better way to start this precedent upon its career, than by affirming the order appealed from."

[11]In Aronson *v.* Baker (1887) 43 N. J. Eq. 365, 12 Atl. 177, at p. 369, the court said: "The rule which I think should be adopted may be stated as follows: that the owner of a dramatic or musical composition may, like the owner of any other kind of property, do with his own as he pleases; he may retain it for his own use and benefit, or he may give it to the public out and out, or he may make a limited or partial dedication of it, and when his act of dedication is of such a character as to show unmistakably that he does not intend to abandon all right, but simply to give the public the right to have a limited use of his property, or to use it in a particular way, and to reserve to himself whatever is not plainly given, the public acquire the right to use his property to the extent of his dedication, but nothing more, and any use of it in excess of the extent dedicated is in violation of his reserved rights."

[12]Ferris *v.* Frohman (1912) 223 U. S. 424, 32 Sup. Ct. 263, (unpublished play); Thompkins *v.* Hallack (1882) 133 Mass. 32; Aronson *v.* Baker, *supra*; Palmer *v.* DeWitt (1872) 47 N. Y. 532; Caird *v.* Sime (1887) 12 App. Cas. 326; Nicols *v.* Pitman (1884) 26 Ch. D. 374; see Drummond *v.* Altemus (C. C. 1894) 60 Fed. 338.

[13]See cases cited in footnote 12.

[14]See Board of Trade *v.* Christie Co., *supra*; Kiernan *v.* Manhattan Quotation Tel. Co., *supra*.

[15]Cases in footnote 14, *supra*. Board of Trade *v.* Tucker (C. C. A. 1915) 221 Fed. 305; Exchange Tel. Co. *v.* Central News, Ltd., *supra*; Exchange Tel. Co. *v.* Gregory & Co., *supra*; Board of Trade *v.* Hadden-Krull (C. C. 1901) 109 Fed. 705.

[16]Board of Trade *v.* Christie Co., *supra*, p. 251. The nature of the protection sought in the principal case has a close analogy to that sought in Fonotipia Ltd. *v.* Bradley (C. C. 1909) 171 Fed. 951; and in Prest-O-Lite Co. *v.* Davis (D. C. 1913) 209 Fed. 917, aff'd (C. C. A. 1914) 215 Fed. 349.

In the former case at pp. 960-1, Judge Chatfield said, "We therefore reach the broad question of the power of a court of equity to secure to an individual by injunction the full employment of both corporeal and incor-

although the news is sold to the public in the shape of newspapers or donated to the public by writing on bulletin boards—a condition where an express restriction would not only be ineffective but absurd—the equity court is not reaching too far when it implies and enforces a restriction that the news shall not be used in such a way as to defeat the commercial value which it has to the complainant or to deprive him of the reward because of which alone the business and public service of news gathering is made profitable. In fact we fail to find a single case where an equity court in dealing with a commercial commodity—a result or record of expense and labor—has held that a use which was necessary to make the commercial value of the commodity available was at the same time such an act or "publication" as destroyed the property right, the value of which was just beginning to be realized.[17] If such is the result of the decisions, the court in enjoining the third practice set forth in the bill applies to a new set of facts, and in the most just and beneficial manner, a rule which is supported by an abundance of authority.

LIABILITY OF A CHARITABLE INSTITUTION FOR TORTS.—The general rule that an employer is liable not only for his own wrongful acts, but also for those of his servants committed in the course of their employment, is subject to an exception in favor of charitable institutions.[1]

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poreal rights in property created by him or at his expense, and capable of a taking by another, where such taking either diminishes or destroys the enjoyment of those rights by the owner and divests a part of the enjoyment of profits from the rights to the one complained of."

[17]Exchange Tel. Co. *v.* Central News, Ltd., *supra*; Exchange Tel. Co. *v.* Gregory & Co., *supra*; McDearmott Co. *v.* Board of Trade (C. C. A. 1906) 146 Fed. 964; Kiernan *v.* Manhattan Quotation Tel. Co., *supra*; Palmer *v.* DeWitt (1872) 47 N. Y. 532; Board of Trade *v.* Christie Co., *supra*; National Tel. News Co. *v.* Western Union Tel. Co., *supra*; Board of Trade *v.* Tucker, *supra*; Board of Trade *v.* Hadden-Krull Co., *supra*.

It is believed that this rule harmonizes all the cases where a complainant has appealed to equity for the protection of an incorporeal property right, not protected by law. The court sometimes grants relief on the basis of unfair competition as in Montegut *v.* Hickson (1917) 178 App. Div. 94, 164 N. Y. Supp. 858, (see criticism in 17 Columbia Law Rev. 730). Whether the decision is to be supported on the ground taken by the court or not, it is submitted that it may be supported as a protection of a property right, published only to the extent made necessary by the nature of the business. Such a class of cases as is represented by Stein *v.* Morris (Va. 1917) 91 S. E. 177, where relief is denied, may be distinguished on the basis that there is no commercial embodiment of the idea, corresponding to the dress model in the Montegut case, *supra*, and to the news in the principal case.

[1]A charitable institution is one devoted to the benefit of the public and from which those who conduct its activities receive no pecuniary benefit. So an institution maintained to provide, at reasonable cost, a home for working girls, Thornton *v.* Franklin Square House (1909) 200 Mass. 465, 86 N. E. 909, or a free hospital, is a charity and the latter does not lose its character because some of its patients pay regular fees. Duncan *v.* Nebraska Sanitarium & Benevolent Ass'n. (1912) 92 Neb. 162, 137 N. W. 1120; Powers *v.* Massachusetts Homœopathic Hospital (C. C. A. 1901) 109 Fed. 394; Adams *v.* University Hospital (1907) 122 Mo. App. 675, 99 S. W. 453. But a Y. M. C. A., Chapin *v.* Holyoke Y. M. C. A. (1896) 165 Mass. 280, 42 N. E. 453, or an employees' mutual benefit society is not a charity. Coe *v.* Washington Mills (1889) 149 Mass. 543, 21 N. E. 966; but *cf.* Fire Ins. Patrol *v.* Boyd (1888) 120 Pa. 624, 15 Atl. 553.